

1200 EIGHTEENTH STREET, NW  
WASHINGTON, DC 20036

TEL 202.730.1300 FAX 202.730.1301  
WWW.HARRISWILTSHIRE.COM

ATTORNEYS AT LAW

May 1, 2008

**Ex Parte – Via Electronic Filing**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, D.C. 20554

Re: *Intercarrier Compensation for ISP-Bound Traffic*, CC Docket No. 99-68;  
and *Developing a Unified Intercarrier Compensation Regime*, WC Docket  
No. 01-92

Dear Ms. Dortch:

On May 1 2008, Michael P. Donahue, Senior Regulatory Counsel with Level 3 Communications, LLC (“Level 3”) and I met with Chris Moore, Legal Advisor to Commissioner Deborah Taylor Tate.

Our presentation is summarized in the attached document which was provided to the FCC participants, and in Level 3’s previously filed ex parte letter dated October 4, 2004 and June 23, 2004, which have previously been filed in the above-captioned dockets and are incorporated herein by reference.<sup>1</sup> In addition, we stated that not only are number of dial-up Internet access users declining significantly, but the usage per dial-up user is also declining significantly.

---

<sup>1</sup> See Letter of John T. Nakahata to Marlene H. Dortch, Secretary, FCC, CC Dockets No. 96-98, 99-68 7 01-92 and WC Docket No. 03-171, filed October 4, 2004, and attachment thereto (Level 3 White Paper dated June 23, 2004).

Marlene H. Dortch

May 1, 2008

Page 2 of 2

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "John T. Nakahata", written in a cursive style.

John T. Nakahata

*Counsel for Level 3 Communications*

Cc: Chris Moore



## *ISP Remand* Market Update

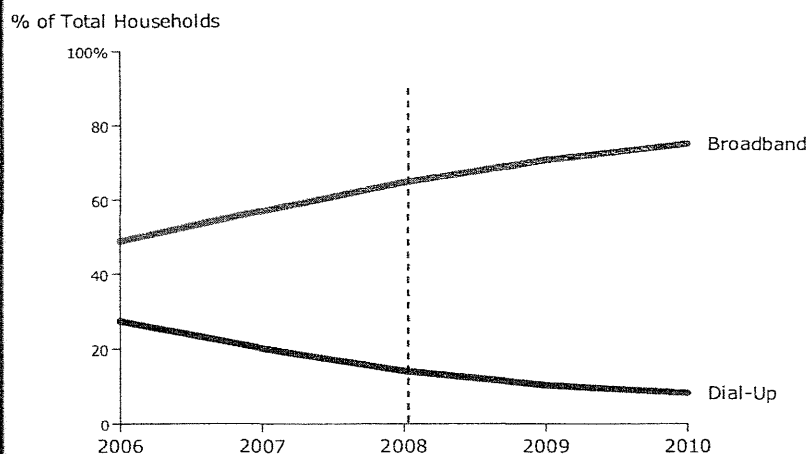
April 23, 2008

# Internet Access Overview



- Dial-up access is declining sharply
- Important tool to access Internet in some segments of population

## Projected Access Method



Source: Frost & Sullivan, *North American Residential Broadband Access Services Markets, N320-63*, 2008, pg. 1 -29

## Broadband Adoption

- Urban: 51%  
Rural: 39%
- Family Income over \$35K: 69%  
Family Income under \$35K: 29%
- Some College or more: 65%  
High School equivalent or less: 31%
- Caucasian or Asian: 56%  
Other minority groups: 36%

Source: US Dept of Commerce, National Telecommunications & Information Administration, *Networked Nation: Broadband in America 2007*, October 2007, Tables 1 and 3. Note: Statistics for households based on demographics of Householder

# Dial-up Internet Access Supply Chain



- Most consumers of dial-up are served by this typical value chain:

## End users

Rely on ISPs to supply dial-up internet access services

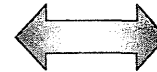


## Internet Service Providers

ISPs market dial-up services, provide dialer client software, user support and maintain RADIUS servers. ISPs may also offer other feature functionality including e-mail accounts, storage and acceleration software

*Examples include:*

- AOL
- EarthLink (also owns PeoplePC)
- MSN (Microsoft)
- United Online (Juno and NetZero brands)



## Wholesale Providers

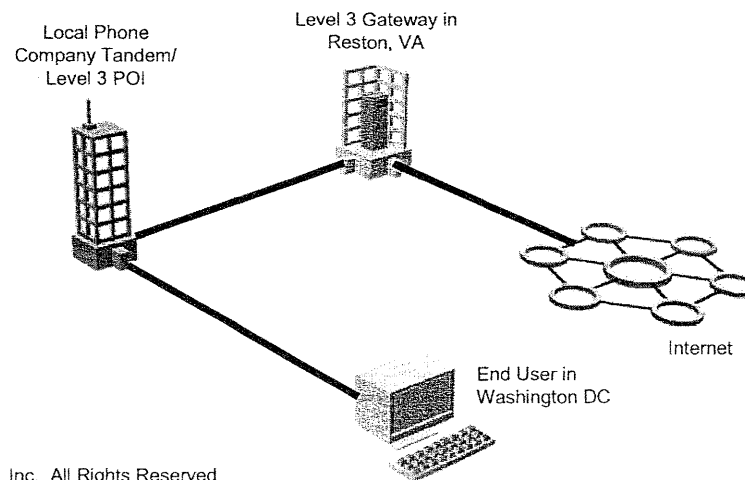
Provide underlying network infrastructure and management including modems, telephone numbers, number porting and capacity management

*Examples include:*

- Level 3
- Verizon
- AT&T
- PAETEC

## Level 3 Dial-up Call Flow Example

1. DC end user dials local access number
2. Call routed through local telephone company infrastructure to Level 3 POI
3. Level 3 transports traffic to Reston
4. Call connected to Level 3 modem banks
5. Level 3 routes traffic via Network



# History of ISP Remand



- ∴ At first, RBOCs argued calls were interstate, not compensable as local.
- ∴ In *Remand Declaratory Ruling*, FCC agreed and offered two rationales under Section 201 and then Section 251(g). D.C. Circuit rejected reliance on Section 251(g).
- ∴ FCC established compensation rate cap at .0007 per minute, subject to mirroring.
  - *Underlying agreements highlighted in order made provision for payment of all ISP bound traffic.*
- ∴ RBOCs went back to states and argued that since ISP bound traffic was interstate, a local presence was required before compensation was owed.
- ∴ Decision makers seized on language in para 10:
  - "... an ISP's end-user customers typically access the Internet through and ISP server located in the same local calling area," even though FCC eliminated "local" traffic limitation from rule.
- ∴ Differing views
  - Local
  - Intrastate Access
  - Separate trunk groups
  - Must have physical presence in Local Calling Area

# VNXX Demystified

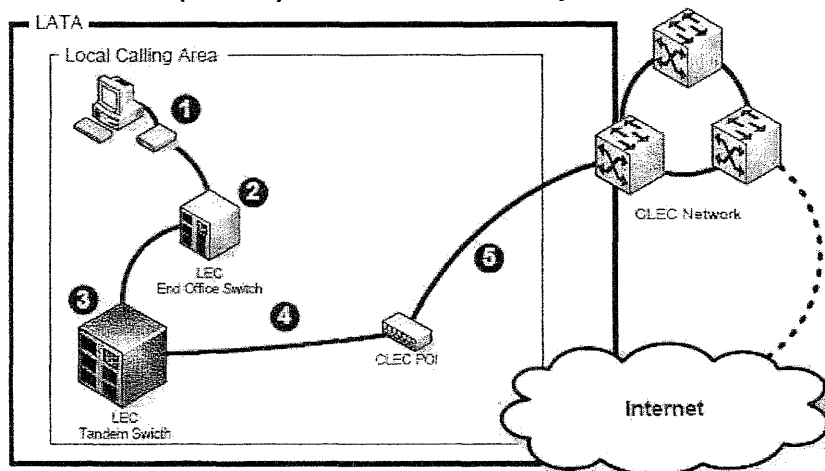


## ■ ■ VNXX Myths:

- VNXX is defined
  - **FALSE:** No definition has been universally accepted and states have been formulating their own definitions, which are conflicting.
- ISPs "Local Presence" is defined by where the modem bank is located
  - **FALSE:** Since the late 70's commercial access to email and the internet from companies such as CompuServe have been provided by centralized Facilities & Servers with network links extending their reach to a broad area. Buying transport to a location should equate to buying a "local presence".
- VNXX creates an environment of arbitrage by the one-way nature of traffic
  - **FALSE:** Dial up minutes are declining so quickly that little to no opportunity exists for arbitrage given the need for expensive network build outs as evidenced by the lack of new competition.
- VNXX unfairly burdens the originating carrier with costs
  - **FALSE:** When the Wholesale Provider of the dial-up service pays for transport at TELRIC into the local calling area, the only cost the originating carrier incurs is payment of reciprocal compensation.
    - Further, no basic rate increase proceeding to Level 3's knowledge has even added reciprocal compensation for ISP-bound traffic as an input.

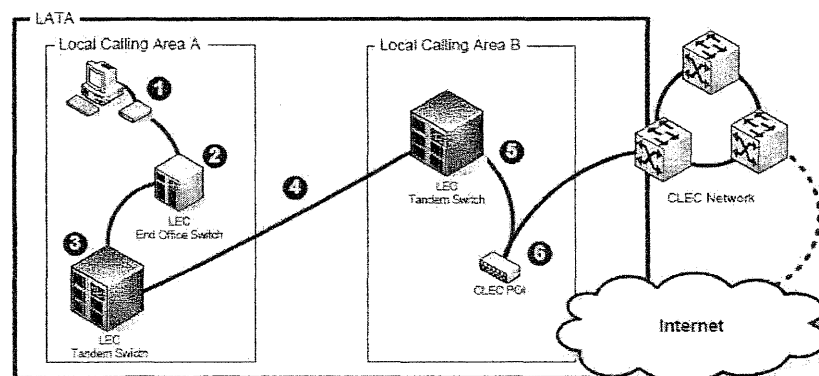
# Interconnection Diagrams

## Provider (CLEC) *with* Local Transport



- ① End Users Computer Dials ISP
- ② LEC End Office Switch checks for route of Number  
Route is returned with LRN of CLEC homed behind LEC Tandem in LCA  
LEC End Office Switch Routes call to it's Tandem
- ③ LEC Tandem in LCA routes to CLEC Trunk Groups to CLEC
- ④ LEC Transports Call to CLEC just like it would any other local call in LCA
- ⑤ CLEC routes call across its network and terminates call to the Internet

## Provider (CLEC) *without* Local Transport



- ① End Users Computer Dials ISP
- ② LEC End Office Switch checks for route of Number  
Route is returned with LRN of CLEC homed behind LEC Tandem in LCA B  
LEC End Office Switch Routes call to it's Tandem
- ③ LEC Tandem in LCA A routes to LEC Tandem to LCA B
- ④ LEC Transports Call Across LCA Boundaries without compensation
- ⑤ LEC Tandem in LCA B routes call to CLEC POI in LCA B
- ⑥ CLEC routes Call through its network to the Internet



# Policy Implications for the Digital Divide



- FCC should reaffirm the existing reciprocal compensation rate cap of \$.0007, with mirroring required.
- Retain interconnection under Section 251.
- Clarify that a wholesale or retail provider of dial up services who pays for transport to the local calling area has established physical presence.
- Unless the FCC acts, states will continue to issue incongruous and conflicting decisions on compensation and presence.
  - States which do not balance transport obligations with reciprocal compensation will discourage providers from continuing to offer service in their state.
- Loss of dial-up providers will result in higher dial-up price points or loss of dial-up service in some locations.
- Without affordable access and wide spread access to dial-up service, the segments most vulnerable to the lack of access to the social, financial and health benefits of the internet will be the negatively impacted.